

CONCURRENCE SHEET FOR ORDER X-83-04-02-3008

USEPA RCRA



3009375

1315G

CONCURRENCES

SYMBOL	WMB	WMB	AWMD	AWMD	DRA	Garcia	
SURNAME	Hofer	Feigner	Findley	Smith	Coate	ORC	
DATE	4/27	out	4/27	4/27		4/27	

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7 UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
8 Region 10
1200 Sixth Avenue
Seattle, Washington 98101

9 IN THE MATTER OF:)

10 Environmental Protection Agency)

11 Complainant,)

12 v.)

13 Arrcom Incorporated,)
14 Drexler Enterprises Incorporated,)
George W. Drexler (Operator),)
15 Thomas Drexler (Operator),)
W. A. Pickett (Operator),)
16 Warren Bingham (Owner),)

17 Respondents.)

RCRA Docket X-83-04-02-3008

COMPLAINT AND
COMPLIANCE ORDER

18
19 COMPLAINT

20 This is a civil administrative action initiated pursuant to Section
21 3008(a) of the Resource Conservation and Recovery Act [42 U.S.C.
22 6928(a)], hereinafter referred to as "the Act." The Complainant is
23 Region 10 of the United States Environmental Protection Agency (EPA).
24 Based on a compliance inspection conducted on July 20, 1982, by EPA and
25 the Panhandle Health District I (Idaho), Complainant has reason to
26 believe that the above-named Respondents have violated Section 3005 of
27 the Act (42 U.S.C. 6925) as follows:

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1. Respondents have operated a facility (ID 0800961) for the treatment, storage, and/or disposal of hazardous waste since January 1, 1980, located at 5 miles East of the Stateline on Highway 53, Rathdrum, Idaho (mailing address: Rural Route 3, Box 258-A6, Rathdrum, Idaho 83858). Furthermore, Respondents are transporters of hazardous waste. Hazardous waste manifests from the United Paint Manufacturing Company, Washington (nine manifests from November 19, 1980 to December 3, 1981) and the Anaconda Aluminum Company, Montana (one manifest dated February 26, 1981) document these activities.

2. Respondents submitted a Notification of Hazardous Waste Activity (EPA Form 8700-12) which was received by EPA on August 20, 1980. This notification satisfied 3010(a) of the Act and 40 CFR 122.21(c) [recodified on April 1, 1983 as 40 CFR 270.1(b)]. This notification indicated that Respondents were generators and also treaters, storers, and/or disposers of hazardous waste.

3. 40 CFR Part 262 establishes standards for all hazardous waste generators. Respondents are generators of hazardous waste as evidenced by the Notification of Hazardous Waste Activity.

4. Respondents submitted a Part A permit application (EPA Form 3510-1) which was received by EPA on November 19, 1980, as required by 40 CFR 122.22 [recodified on April 1, 1983 as 40 CFR 270.10]. This application stated that the Respondents were storers and treaters of hazardous waste.

5. 40 CFR Part 265 establishes standards for all hazardous waste treatment, storage, and disposal facilities. These standards apply until final administrative disposition of permit applications submitted by

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1 owners and operators of facilities has been made. No such disposition
2 has been made with respect to Respondents' facility. Thus, the standards
3 of 40 CFR Part 265 apply thereto.

4 6. Respondents submitted a Part A permit application without having
5 a proper signatory for the permit as required by 40 CFR 122.4(b)
6 [recodified on April 1, 1983 as 40 CFR 270.10(b)]. W. A. Pickett, an
7 employee for Respondent George W. Drexler (operator), signed the Owner
8 Certification of the application. Respondent Warren Bingham (owner)
9 stated to EPA on July 9, 1982, that he had not authorized W. A. Pickett
10 to sign the Part A permit application as the owner of the facility.

11 7. Complainant, in a letter dated February 9, 1982, requested that
12 Respondent submit a corrected Part A permit application or submit a
13 closure plan. Respondents have subsequently stopped operation but have
14 neither resubmitted the Part A permit application nor submitted a closure
15 plan. As evidenced in paragraph 8, below, hazardous waste remains
16 onsite; therefore, the facility has not been properly closed as required
17 by 40 CFR 265.111.

18 8. Respondents spilled and/or disposed hazardous waste or hazardous
19 waste constituents into the soil surrounding the Shaker Building of the
20 facility. Such release of hazardous waste or hazardous waste
21 constituents into the environment constitutes disposal. The facility has
22 not qualified for "interim status" for disposal and therefore is in
23 violation of Section 3005 of the Act. Samples of contaminated soil and
24 of spilled material taken during an inspection conducted by EPA employees
25 on July 20, 1982, and subsequently analyzed revealed the following
26 hazardous wastes constituents: 1,1,1-trichloroethane; ethylbenzene;
27 methylene chloride; and toluene. Spent ethylbenzene and toluene were
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1 reported in the Respondents' Part A permit application (EPA Hazardous
2 Waste Codes F003 and F005, respectively).

3 9. Respondents further failed to comply with the regulatory
4 requirements applicable to a hazardous waste management facility in that
5 they failed:

6 (a) to prevent the unknowing entry and to minimize the possibility
7 for the unauthorized entry of persons or livestock as required
8 by 40 CFR 265.14. Fencing at the site did not completely
9 surround the active portion of the facility,

10 (b) to maintain and operate the facility to minimize the possibility
11 of any release of hazardous waste as required by 40 CFR 265.31,

12 (c) to have an external communication device capable of summoning
13 emergency assistance and to maintain fire control equipment as
14 required by 40 CFR 265.32, and

15 (d) to submit financial assurance and liability documents as
16 required by 40 CFR 265, Subpart H.

17 10. Complainant's review of Respondents' records revealed that the
18 Respondents failed:

19 (a) to develop a written waste analysis plan as required by 40 CFR
20 265.13(b),

21 (b) to develop a written inspection schedule for inspections as
22 required by 40 CFR 265.15(b)(1),

23 (c) to develop a written training schedule and maintain records as
24 required by 40 CFR 265.16,

25 (d) to attempt to make contingency arrangements with local
26 authorities as required by 40 CFR 265.37,

(e) to develop a contingency plan and emergency procedures as required by 40 CFR 265.51(a),

(f) to maintain manifests and operating records required by 40 CFR 265.71 and 40 CFR 265.73, respectively, and

(g) to develop a closure plan as required by 40 CFR 265, Subpart G.

PROPOSED CIVIL PENALTY

In view of the above-cited violations, Complainant proposes to assess a penalty of SEVENTY-FIVE THOUSAND NINE HUNDRED AND TWENTY-FIVE DOLLARS (\$75,925), computed in accordance with EPA Guidelines for penalties assessed under the Act, as follows:

<u>Violation</u>	<u>Proposed Penalty</u>
*40 CFR 122.4(b)	\$ 22,500
RCRA Section 3005	\$ 22,500
40 CFR 265.13(b)	\$ 4,500
40 CFR 265.14	\$ 2,550
40 CFR 265.15(b)(1)	\$ 1,975
40 CFR 265.16	\$ 800
40 CFR 265.31	\$ 2,500
40 CFR 265.32	\$ 9,900
40 CFR 265.37	\$ 800
40 CFR 265.51(a)	\$ 1,975
40 CFR 265.71(a)(5)	\$ 1,975
40 CFR 265.73	\$ 1,975
40 CFR 265.112	<u>\$ 1,975</u>
Total	\$ 75,925

*Recodified on April 1, 1983 as 40 CFR 270.10(b)

Based on the foregoing and pursuant to Section 3005 of the Act, it is hereby ordered that the Respondents take the following actions within the time periods specified:

1. Respondents shall immediately upon receipt of this Order, develop a written plan to cleanup the hazardous waste and hazardous waste constituents that have spilled or were otherwise released onto the ground or into ground-water, and/or that have migrated into the ground or into ground-water. This plan shall address the cleanup and disposition of all contaminated soil, water and ground-water such that all remaining soil, water, and ground-water are at background level. This plan shall also address the sampling and analysis necessary to confirm adequate cleanup. This plan shall be submitted to Mr. George Hofer at the U.S. Environmental Protection Agency, 1200 Sixth Avenue, Seattle, WA 98101-3188 within 20 days of receipt of this Order. This plan, after modification and approval by EPA, shall be implemented within five (5) days of EPA's approval and completed as expeditiously as possible but in no event later than thirty (30) days after EPA approval.

2. Respondents shall within one hundred and eighty (180) days of receipt of this Order submit a Part B permit application in accordance with 40 CFR 122.22(a)(4) [recodified on April 1, 1983 as 270.10(e)(4)]. This Part B permit application shall address the relevant requirements listed in 40 CFR 122.25 [recodified on April 1, 1983 as 40 CFR 270.14 thru 270.21]. This order constitutes a formal request for a Part B permit application pursuant to 40 CFR 122.22(a)(4) [recodified on April 1, 1983 as 270.10(e)(4)]. This Part B permit application shall be submitted to Mr. George Hofer at the address listed in paragraph 1.

1 Failure to submit complete application may result in further
2 enforcement action and will result in the initiation of permit denial,
3 which will terminate interim status for this facility in accordance to 40
4 CFR 122.22(a)(5) [recodified on April 1, 1983 as 40 CFR 270.10(e)(5)].

5 3. Respondents shall comply with either paragraphs 4 and 5 or
6 paragraphs 6 thru 8 (inclusive). Respondents shall, within fifteen (15)
7 days of receipt of this Order, state in a letter to Mr. George Hofer at
8 the above address which option has been chosen.

9 4. If Respondents elect to permanently cease operation as a hazardous
10 waste facility, Respondents shall submit a written statement to Mr.
11 George Hofer at the above address which contains the following within
12 fifteen (15) days of receipt of this Order:

13 (a) Request for EPA to deny Respondents' Part B permit application.

14 (b) Waiver of the one hundred and eighty (180) day Part B
15 preparation period allowed for in 40 CFR 122.22 [recodified on
16 April 1, 1983 as 40 CFR 270.10].

17 (c) Declaration that Respondents will cease operation immediately
18 and will close the facility within one hundred and eighty (180)
19 days.

20 5. Respondents shall submit an appropriate closure plan in
21 accordance with 40 CFR 265, Subpart G within thirty (30) days of receipt
22 of this Order. Closure of this facility shall commence upon submission
23 and Complainant's approval of the plan and shall be accomplished as
24 expeditiously as possible but in no event later than one hundred and
25 eighty (180) days from the receipt of this Order. The Closure Plan shall
26 be submitted to Mr. George Hofer at the above address.

1 6. Respondents shall immediately upon receipt of this Order
2 initiate the following activities:

- 3 (a) Inspect the facility for discharge of hazardous waste and for
4 deterioration of containers, tanks, and equipment as required by
5 40 CFR 265.15(a) and (c), 40 CFR 265.174, and 40 CFR 265.194.
6 (b) Maintain personnel training records as required by 40 CFR 265.16.
7 (c) Maintain manifest copies as required by 40 CFR 265.71.
8 (d) Maintain operating records as required by 40 CFR 265.73.

9 7. Respondents shall immediately on the receipt of this Order
10 institute the following activities and complete these activities
11 as expeditiously as practicable but in no event later than
12 thirty (30) days after the receipt of this Order:

- 13 (a) Remedy any deterioration of tanks and equipment revealed through
14 inspection pursuant to 40 CFR 265.15(c).
15 (b) Install required communication and emergency equipment as
16 required by 40 CFR 265.32.
17 (c) Make contingency arrangements with local authorities as required
18 by 40 CFR 265.37.
19 (d) Install needed security system as required by 40 CFR 265.14.

20 8. Respondents shall submit to George Hofer at the above address,
21 within thirty (30) days of the receipt of this Order, the
22 following:

- 23 (a) A Part A application containing the proper signatures as
24 required by 40 CFR 122.4(b) [recodified on April 1, 1983 as 40
25 CFR 270.10(b)].
26 (b) Inspection Plan to satisfy 40 CFR 265.15(b)(1).
27

1 (c) Training Plan to satisfy 40 CFR 265.16.

2 (d) Contingency Plan to satisfy 40 CFR 265, Subpart D.

3 (e) Closure Plan to satisfy 40 CFR 265, Subpart G.

4 (f) Financial assurance and liability documents to satisfy 40 CFR
5 265, Subpart H.

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7 OPPORTUNITY TO REQUEST A HEARING

8 A copy of the "Consolidated Rules of Practice" governing these
9 penalty proceedings is attached. Under those rules Respondents have the
10 right to request a hearing:

11 (a) to contest any material fact set forth in the Complaint, or

12 (b) to contest the appropriateness of the proposed penalty, or

13 (c) to contend that Respondents are entitled to judgment as a matter
14 of law.

15 To avoid being found in default, having the proposed civil penalty
16 assessed, and the Compliance Order becoming final without further
17 proceedings, Respondents must file a written response to the
18 Complainant. Respondents' written response may include a request for a
19 hearing, if desired. The response (if any) must be addressed to the
20 Region 10 Hearing Clerk, Office of Regional Counsel, U.S. Environmental
21 Protection Agency, M/S 613, 1200 Sixth Avenue, Seattle, Washington
22 98101-3188 and sent within thirty (30) days of Respondents' receipt of
23 this Complaint and Compliance Order. Respondents' response should
24 clearly and directly admit, deny, or explain each of the factual
25 allegations contained in the Complaint about which Respondents have any
26 knowledge. The response should contain: (1) a definite statement of the

1 facts which constitute the grounds of defense, and (2) a concise
2 statement of the facts Respondents intend to place at issue in the
3 hearing if requested.

4 If Respondents fail to file a written answer within thirty (30) days
5 of receipt of this Complaint and Compliance Order, such failure
6 constitutes an admission of all the facts alleged in the Complaint and a
7 waiver of Respondents' right to a hearing. A final order upon default
8 will thereafter be issued by the Regional Administrator and filed with
9 the Region 10 Hearing Clerk.

10 Any hearing requested by Respondents will likely be held at the
11 Region 10 office of EPA in Seattle. Hearings held will be conducted in
12 accordance with the attached Consolidated Rules of Practice (40 CFR Part
13 22 (45 FR 24363)).

14
15 INFORMAL SETTLEMENT CONFERENCE

16 Whether or not Respondents requests a hearing, EPA encourages
17 settlement of this proceeding consistent with the provisions of the Act.
18 At an informal conference with representatives of the Complainant,
19 Respondents may comment on the charges and provide whatever additional
20 information Respondents believe is relevant to the disposition of this
21 matter, including any actions Respondents have taken to correct the
22 violations and any other special circumstances Respondents care to raise.

23 Respondents' request for an informal conference and other questions
24 that Respondents may have regarding this Complaint should be directed, in
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1 writing, to Mr. Kenneth D. Feigner, U.S. Environmental Protection Agency,
2 Region 10, M/S 533, 1200 Sixth Avenue, Seattle, Washington 98101-3188, or
3 by telephone to Mr. Feigner at (206) 442-2782.

4 Please note that a request for an informal settlement conference does
5 not extend the thirty (30) day period during which a written answer and
6 request for hearing must be submitted. The informal settlement
7 conference procedure may be pursued simultaneously with the adjudicatory
8 hearing procedure. Any settlement which may be reached as a result of
9 such conference will be embodied in a written Agreed Final Compliance
10 Order to be issued by the Regional Administrator of EPA, Region 10, and
11 signed by Respondents. Respondents' signing of such Agreed Final
12 Compliance Order would constitute a waiver of Respondents' right to
13 request a hearing on any matter stipulated therein.

14 15 NOTICE OF LIABILITY FOR ADDITIONAL CIVIL PENALTIES

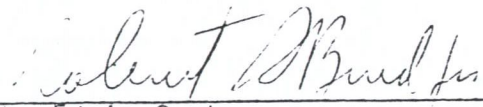
16 Pursuant to the terms of Section 3008(a)(3) of the Act, a violator
17 failing to take corrective action within the time specified in a Final
18 Compliance Order is liable for a civil penalty of up to TWENTY-FIVE
19 THOUSAND DOLLARS (\$25,000) for each day of continued noncompliance.

20 21 RESOLUTION OF THIS PROCEEDING WITHOUT HEARING OR CONFERENCE

22 Instead of filing an answer requesting a hearing or requesting an
23 informal settlement conference, Respondents may choose to comply with the
24 terms of the Compliance Order, and to pay the proposed penalty. In that
25 case, payment should be made by sending to the Regional Hearing Clerk,
26 U.S. Environmental Protection Agency, Region 10, M/S 613, 1200 Sixth
27 Avenue, Seattle, Washington, 98101-3188, a cashier's check or certified
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1 check payable to "Treasurer, United States of America" in the amount
2 specified in the "Proposed Civil Penalty" section of this Complaint and
3 Compliance Order.

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5 DATED this APR 27 1983 day of _____ 1983.

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8 L. Edwin Coate
9 Acting Regional Administrator
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